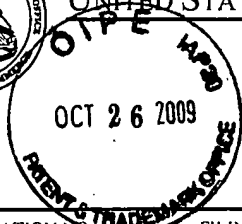




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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,924

03/26/2004

Toni Kopra

872.0180.U1(US)

9401

29683 7590 10/14/2009

HARRINGTON & SMITH, PC
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EXAMINER

SAMS, MATTHEW C

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

10/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

USACTION

DUE DATE _____

PAPER DATED 10/14/09

OA _____ FINAL _____

MSG PT _____ DWG _____

APPEAL _____ ISSUE FEE _____

OTHER _____

RECEIVED

OCT 16 2009

HARRINGTON & SMITH, PC



**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/810,924

Applicant(s)

KOPRA ET AL.

Examiner

MATTHEW SAMS

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 9/24/2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection:
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see continuation page.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Lester Kincaid/
Supervisory Patent Examiner, Art Unit 2617

Response to Arguments

1. Applicant's arguments filed 9/24/2009 have been fully considered but they are not persuasive.

2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 385 (Fed. Cir. 1986).

3. In response to the Applicant's argument regarding claim 1 that "Wang's method does not involve requesting the mobile station to provide a second set of features and does not appear amendable to modification to request a second set of features from the mobile station since the method of Wang involves a first search of highly used sound files only to be followed by a second search of less highly used sound files" (Page 14), the Examiner agrees in part and respectfully disagrees in part.

The Examiner agrees that Wang does not teach a "request for a second set of features from the mobile station". However, Wang teaches the ability to perform a second search when a result is not found (Col. 19 lines 23-34), which the Examiner views as being enough reasoning to bring in the analogous art of Rhoads to teach a system for identifying audio samples (Abstract and Col. 3 lines 17-25) with the ability to extract multiple fingerprints from a file in order to resolve ambiguity (Col. 3 lines 22-25), with the additional ability to combine multiple fingerprints into a higher level fingerprint. (Col. 3 lines 6-13 "master fingerprint")

Further, with respect to the "remote service" that performs "any necessary higher level feature extraction", the Applicant is reminded that the "remote service" has no patentable weight when determining the patentability of the claimed "apparatus" in claims 1, 48 and the "computer readable storage medium" of claim 23. Finally, a "higher level feature extraction" is not positively recited limitation (*i.e.* it is not required by the claim language), therefore the Examiner views the ability to create a "master fingerprint" as reading upon the limitation.

4. In response to the Applicant's argument that "Rhoads, in column 3, lines 1-25, does not disclose receiving "a request message that requests at least one additional feature" (Page 16), the Examiner respectfully disagrees.

Rhoads teaches "To resolve this ambiguity, subsequent excerpt-fingerprints can be checked". (Col. 3 lines 22-25) The Examiner notes two possible ways to identify the file, by transmitting all the fingerprints from the file at once or on an as needed basis, based on feedback. Therefore, the Examiner believes it would be obvious to one of ordinary skill in the art to try both solutions, since there is a finite number of identified, predictable solutions, each solution having a reasonable expectation of success (*i.e.* the identification of the file), in order to determine which solution resulted in the fastest identifications while using the least amount of bandwidth.

5. In response to the Applicant's arguments regarding Vetro, the Examiner respectfully disagrees.


Applicant's claims recite the use of "MPEG-7 descriptors", which are well known in the art and described in Vetro. Further, the descriptors can be used like landmarks or

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fingerprints to describe the location of information within a file (Vetro Col. 4 line 64 through Col. 5 line 6), which directly correlates to the use of fingerprints/landmarks for identifying a file without being able to recreate the file from the fingerprints/landmarks, thereby avoiding potential DRM issues.

/MATTHEW SAMS/

Examiner, Art Unit 2617

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Patent-Agency Harrington-Smith (EXT-RES/Usa)

From: Patent-Agency Harrington-Smith (EXT-RES/Usa) **Sent:** Wed 10/21/2009 10:10 AM
To: Patent-Agency Ditthavong-Mori (EXT-RES/SanDiego)
Cc:
Subject: Keth Ditthavong/Harry Smith, NC43967US (872.0180.U1(US)), Advisory Action for Transferred file
Attachments:  [NC43967US Advisory Action dated 14 Oct 2009.pdf\(120KB\)](#)

ATTORNEY-CLIENT COMMUNICATION-PRIVILEGED/CONFIDENTIAL

USSN: 10/810,924

Attached please find an Advisory Action dated Oct 14, 2009 for the above noted patent application, original coming by mail.

Best regards,

Lisa Mrozek
for Harry Smith

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